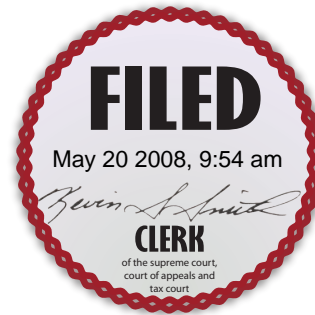


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CARISSA A. MILLER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 39A01-0712-CR-594

APPEAL FROM THE JEFFERSON CIRCUIT COURT
The Honorable Ted R. Todd, Judge
Cause No. 39C01-0703-MR-51

May 20, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Carissa A. Miller (Miller), appeals her sentence for conspiracy to commit murder, a Class A felony, Ind. Code §§ 35-42-1-1 and 35-41-5-2.

We affirm.

ISSUES

Miller presents two issues for our review:

- (1) Whether the trial court abused its discretion by failing to consider Miller's guilty plea as a mitigating circumstance; and
- (2) Whether her sentence is inappropriate in light of the nature of her offense and her character.

FACTS AND PROCEDURAL HISTORY

One night in early January of 2007, Miller was at the home of her fiancé, Brian Kemp (Kemp), in Hanover, Indiana, along with Brandon Skinner (Skinner), Michael Bowling (Bowling), and Donielle Sherley (Sherley). Skinner and Sherley's young daughter told the group that Ashley Robinson (Robinson) "had done something to her." (Transcript p. 13). At the time, Robinson was living with Sherley in Madison, Indiana, had a young daughter of her own, and was pregnant. Upon hearing his daughter's allegation, Skinner became upset and said he was going to kill Robinson. Skinner told Miller and Sherley to go and get Robinson and to bring her to the Saluda Bottoms on the Ohio River.

Sherley drove herself and Miller to Sherley's trailer in Madison. The two of them told Robinson to join them for a "girl's night out." (Tr. p. 18). The women then went back to

Kemp's house in Hanover and got into Miller's car because Sherley's car was running out of gas. Miller drove to the Saluda Bottoms, where the three women met Skinner, Kemp, and Bowling. Miller, Robinson, Skinner, Kemp, and Bowling walked down the hill to the water while Sherley stayed behind. At some point, Miller and Bowling walked back up the hill to the vehicles. Skinner eventually came up the hill as well, and Bowling handed him a shotgun. Miller, Sherley, and Bowling then left and returned to Kemp's house.

After the others left, Skinner walked back down to where Robinson and Kemp were standing and shot Robinson in the face with the shotgun. Kemp gave Skinner another shell, and he shot her again before dragging her body into the river. Skinner and Kemp then returned to Kemp's house. Skinner had blood on his pants, so they were put into a bucket of acid. A month-and-a-half after the shooting, Miller went with Kemp to hide the shotgun at Kemp's mother's house. Conservation officers later discovered Robinson's body near the river.

Police interviewed Miller, Skinner, Kemp, Sherley, and Bowling about Robinson's death. After originally denying any involvement, all five eventually admitted their roles. On March 19, 2007, the State filed an Information charging each of them with Count I, murder, a felony, I.C. § 35-42-1-1, and Count II, conspiracy to commit murder, a Class A felony, I.C. §§ 35-42-1-1 and 35-41-5-2. On May 30, 2007, Miller entered into a plea agreement with the State by which she pled guilty to Count II and agreed to cooperate in the prosecutions of Skinner, Sherley, Kemp, and Bowling. In exchange, the State dropped Count I. Sentencing was left to the discretion of the trial court.

At the sentencing hearing held on July 19, 2007, the trial court identified several aggravating circumstances: (1) the conspiracy to which Miller pled guilty resulted in a particularly cold-blooded and cruel murder; (2) Robinson was pregnant at the time of the murder; (3) Miller had many opportunities to phone or even go to the police; and (4) to impose a sentence lower than the advisory would depreciate the seriousness of the crime. The trial court also found the following four mitigating circumstances: (1) Miller expressed sincere remorse; (2) this was an event that is unlikely to recur in Miller's life; (3) Miller has no past criminal record; and (4) Miller was less than three months past her eighteenth birthday when the crime was committed, and her four co-defendants were from five to nine years older.¹ Finding the aggravating and mitigating circumstances to be of equal weight, the trial court imposed the advisory sentence of thirty years with five years suspended to probation.

Miller now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Guilty Plea as a Mitigating Circumstance

Miller first contends that the trial court abused its discretion by failing to identify her guilty plea as a mitigating circumstance. Generally, sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of that discretion.

¹ In contrast to its oral statement, the trial court's written sentencing statement did not list the "depreciate the seriousness of the crime" aggravator or list Miller's age as a mitigator. Miller follows the oral sentencing statement in her brief, and because the State does not urge us to do otherwise, we do the same.

Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

A defendant who pleads guilty deserves “some” mitigating weight in return. *Anglemyer v. State*, 875 N.E.2d 218, 220 (Ind. 2007), *opinion on reh’g*. However, an allegation that the trial court failed to identify a mitigating factor requires the defendant to establish that the factor is both supported by the record and significant. *Id.* at 220-21. The significance of a guilty plea as a mitigating factor varies from case to case. *Id.* at 221. For example, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return for the plea. *Id.* In *Anglemyer*, our supreme court held that the trial court did not abuse its discretion by failing to find the defendant’s guilty plea as a mitigating circumstance where the defendant received a twelve-year reduction in his sentence and the State dropped several additional charges. *Id.*

Miller, too, received a substantial benefit in exchange for her guilty plea. Namely, the State agreed to drop the murder charge against her. This benefit is substantial because Miller could have very easily been convicted of murder. She was intimately involved in the carrying out of Robinson’s death. She lured Robinson into her car under the ruse of a “girl’s night out,” then drove Robinson to the place where she was eventually shot. In addition, a month-and-a-half after the shooting, Miller accompanied Kemp to hide the murder weapon. If Miller had been convicted of murder as an accomplice based on this evidence, she would

have faced a sentence of at least forty-five years and as many as sixty-five years. *See* I.C. § 35-50-2-3.² Instead, she received a sentence of thirty years with five years suspended to probation. In light of this substantial benefit, we cannot say that the trial court abused its discretion in failing to identify Miller's guilty plea as a mitigating circumstance.

II. *Appropriateness*

Miller also argues that her sentence is inappropriate. Indiana Appellate Rule 7(B) permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. Appellate Rule 7(B); *see also Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

We initially note that the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed. *Id.* at 1081. Here, Miller received the advisory sentence of thirty years. *See* I.C. § 35-50-2-4. In addition, the trial court suspended five years to probation. As such, Miller had a tough row to hoe in convincing us that her sentence is inappropriate. She has failed to do so.

² Actually, there are certain circumstances under which a defendant can be convicted and sentenced consecutively for both murder and conspiracy to commit that same murder without violating principles of double jeopardy. *See Jack v. State*, 870 N.E.2d 444, 448-49 (Ind. Ct. App. 2007) (upholding convictions and consecutive sentences for murder and conspiracy to commit that same murder). If that had happened in this case, Miller could have faced a sentence of 115 years: the maximum sentence of fifty years for conspiracy consecutive to the maximum sentence of sixty-five years for murder. *See* I.C. §§ 35-50-2-3 and -4.

Regarding the nature of the offense, the State put it best: “The pregnant victim was taken by people she believed to be her friends to a place where others were waiting to kill her.” (Appellee’s Br. p. 9). And, not only was Robinson pregnant; she had a young daughter who is now motherless. Also, though Miller did not pull the trigger, she did have the power to prevent Robinson’s death. She had plenty of time in the car, both before and after picking Robinson up, to try to put a stop to the chain of events that led to Robinson’s death. Instead, she delivered Robinson directly to her killer. Miller emphasizes the fact that the probation department recommended the minimum sentence of twenty years in its presentence investigation report. However, the probation department contradicted itself by stating that “[i]mposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.” (Appellant’s App. p. 155). The trial court agreed, and so do we.

As for Miller’s character, we acknowledge, as the trial court did, her young age, her lack of criminal history, and her sincere remorse. However, we also know that Miller initially lied to police about her involvement. Furthermore, Robinson’s body was not found for months after her death. Instead of ending the ordeal, Miller aided in the attempted cover-up by helping to hide the murder weapon. Nothing about Miller’s character leaves us

convinced that the advisory sentence of thirty years with five years suspended is inappropriate.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in failing to identify Miller's guilty plea as a mitigating circumstance and that Miller's sentence is not inappropriate.

Affirmed.

BAKER, C.J., and ROBB, J., concur.